No. 93-655

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

EVANSTON HOSPITAL,

Petitioner,

v.

ROBERT V. HAUCK, LOUIS W. SULLIVAN, Secretary of the United States Department of Health and Human Services, PHILLIP BRADLEY, Director of the Illinois Department of Public Aid, and CORBOY & DEMETRIO, P.C.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

WHETHER FEDERAL AND STATE LAW MUST BE CONSTRUED SO AS TO COMPEL A STATE AGENCY ADMINISTERING THE FEDERAL MEDICAID PROGRAM TO ACCEPT A REFUND OF MEDICAID FUNDS FROM A HEALTH CARE PROVIDER THAT HAS ALREADY ACCEPTED SUCH FUNDS IN FULL PAYMENT FOR SERVICES PROVIDED.

SUPREME COURT RULE 29.1 STATEMENT

Respondent, CORBOY & DEMETRIO, P.C., is a professional corporation; there are no parent or subsidiary corporations.

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STATEMENT OF THE CASE

Robert V. Hauck was seriously injured as the result of an electrical charge he sustained in October of 1985. Following the incident, Mr. Hauck required substantial medical care. Evanston Hospital provided both out-patient and in-patient care; its charges for these services totalled $270,760.24 and $3,997.84, respectively.

Due to Mr. Hauck's inability to pay, Evanston Hospital applied for and accepted $113,424.00 as payment for its out-patient services from the Illinois Department of Public Aid ("IDPA"), the agency which administers the Medicaid program in Illinois. Evanston Hospital accepted $1111.50 as payment for its in-patient services from the United States Department of Health and Human Services ("HHS"), the agency which administers the federal Medicare program.

Evanston Hospital accepted these funds with full knowledge of state and federal law that conditions such acceptance upon the understanding that the funds will constitute *payment in full* for services provided. In October of 1992, however, after learning of a significant jury award obtained by Mr. Hauck in a lawsuit stemming from the electrical incident, Evanston Hospital questioned the wisdom of its earlier decision. Evanston Hospital filed a lawsuit in the United States District Court for the Northern District of Illinois seeking an order compelling IDPA and HHS to accept a return of the funds they had earlier provided in order to permit Evanston Hospital to pursue a hospital lien against Mr. Hauck's civil recovery. The district court determined that Evanston Hospital's complaint failed to state a cause of action and, therefore, dismissed the case in its entirety. On appeal, the United States Court of Appeals for the Seventh Circuit affirmed.

In its Petition for a Writ of Certiorari, Evanston Hospital abandoned the position it took throughout the proceed-

ings in the District Court and Court of Appeals with respect to the Medicare payments it received. Evanston Hospital's petition only relates to the Medicaid funds it received.

REASONS WHY THE PETITION SHOULD BE DENIED

Evanston Hospital's Petition for Writ of Certiorari should be denied. The Petition is premised on Evanston Hospital's mistaken belief that the applicable statutes and regulations should be ignored or, at the very least, construed in such tortured fashion that Evanston Hospital may have its way. What Evanston Hospital wants is simple; it seeks a court order that will permit it to renege on the agreement it made with respect to acceptance of government funds. The courts below, however, applied the applicable statutes and regulations and would not permit Evanston Hospital's intended result. This case does not warrant further review.

1. The Illinois Statute is Clear on its Face and Easily Applied.

The Illinois statute regarding a health care provider's acceptance of Medicaid payments is easily applied. The statute clearly requires a provider to accept Medicaid payments as "payment in full" for services rendered and bars the provider from seeking further funds. The statute provides:

> a vender payment . . . shall constitute payment in full for the goods or services covered thereby. Acceptance of the payment by or on behalf of the vendor shall bar him from obtaining, or *attempting to obtain*, additional payment therefor from the recipient or any other person.

305 ILCS 5/11-13 (emphasis added). Evanston Hospital accepted $113,494.00 from Medicaid in payment for the services it provided to Mr. Hauck. By the clear terms of the statute, Evanston Hospital is entitled to nothing further.

2. The Illinois Statute is Consistent with Federal Law.

In an effort to avoid the clear application of the Illinois statute, Evanston Hospital maintains that the statute is inconsistent with federal law. This position, however, is entirely contradicted by federal law:

The pertinent statute provides:

> In the case of an individual who is entitled to medical assistance under the state plan with respect to a service for which a third party is liable for payment, the person furnishing the services may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of any amount for that service . . . .

42 U.S.C. §1396(a)(25)(C).

Similarly, the pertinent federal regulation provides:

> A state plan must provide that the Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance or co-payment required by the plan to be paid by the individual.

42 C.F.R. §447.15.

Ignoring the above statute and regulation, Evanston Hospital attempts to create a conflict by suggesting that prohibiting it from refunding Medicaid payments and asserting a lien against Mr. Hauck's civil recovery conflicts

with the statutory intent of making Medicaid the "payor of last resort." As noted by the Seventh Circuit, however, the Medicaid statutes "do not actually say that Medicaid must be the payor of last resort." Petitioner's Brief, Appendix at 4. Moreover, the conflict claimed by Evanston Hospital is entirely illusory. First, when Evanston Hospital accepted payment from Medicaid, there were no other funds available; therefore, at that time, Medicaid was the payor of last resort. Second, federal regulations compel the administering agency that provides Medicaid funds to seek reimbursement from any third party later found to be liable. 42 C.F.R. §433.139(d)(2). Therefore, when a liable third party is found, as in Mr. Hauck's case, Medicaid will in fact be the payor of last resort.

CONCLUSION

All of these issues were fully addressed by the courts below. Neither the District Court nor the Court of Appeals indicated any difficulty in applying the existing statutory and regulatory framework. The statute and regulations are clear on their face and are entirely consistent with federal law.

For these reason's Evanston Hospital's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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